REMARKS/ARGUMENTS

Applicant appreciates the Examiner's decision to re-open prosecution in view of the Appeal Brief filed by applicant on May 4, 2006.

Applicant further appreciates the Examiner's indication that claims 26 and 27 appear to be allowable over the prior art of record, subject to the obviousness-type double patenting rejections set forth in the Office Action.

Applicant notes at section 3 of the Office Action that the Examiner has requested any related application to be referred to in the first sentence of the specification. No related U.S. patent application is currently pending that merits the first sentence of the specification to be amended, nor supplied to the U.S. Patent and Trademark Office. Currently, one related Canadian patent application is currently pending before the Canadian Patent and Trademark Office. Claims 1-7 and 9-33 are pending in the application.[1]

Claims 1-7 and 9-33 stand rejected on the ground of non-statutory obviousness-type double patenting in view of U.S. Patent Nos. 5,499,340 and 5,590,056. Applicant submits herewith a terminal disclaimer in compliance with 37 C.F.R. §1.321(b), which applicant submits overcomes the non-statutory double patenting rejections set forth in the Office Action.

Claims 1-7, 9-25 and 28-33 stand rejected under 35 U.S.C. §102(e) as being anticipated by Liu et al. (a reference indicated by the Examiner as being cited in a previous Office Action). Applicant respectfully traverses this rejection.

Applicant believes that the Examiner has misidentified the reference cited against applicant's claims under 35 U.S.C. §102(e). In particular, the Examiner cites to Liu et al. A careful review of the image file wrapper however, including the Examiner's search strategy and results dated January 12, 2005, search information including classification databases and other search related notes dated January 26, 2005, the Examiner's search strategy and results dated August 8, 2005, and each of the previously issued Office Actions of January 26, 2005, August 10, 2005, March 22, 2006 and July 19, 2006, has not uncovered or revealed any reference to Liu et al. Further, applicant has performed a search on the U.S. Patent and Trademark Office web site for issued patents and pending patent applications to Liu and has discovered almost 9,500

1. The Disposition of Claims section of the Office Action summary inaccurately identifies claims 1, 7 and 9-33 as pending and rejected.

patents to Liu and over 8,500 pending patent applications to Liu.

In an effort to make a bona fide attempt to respond to the present Office Action, applicant assumes that the Examiner intends to cite once again to Lin et al. (U.S. Patent No. 5,949,415, as previously cited in the Office Actions of January 26, 2005 and August 10, 2005).

Applicant notes that at section 7, response to arguments, of the Office Action, the Examiner states that applicant's arguments filed on May 4, 2006 have been considered but are moot in view of new grounds of rejection.

Applicant has carefully reviewed the cited portions of Lin in the present Office Action, including the Abstract (previously cited by the Examiner), column 2, lines 37-48 (previously cited by the Examiner), discussions beginning at column 3, line 43, the discussion beginning at column 3, line 11, the discussion beginning at column 9, line 6 (i.e., claim 4), the discussion beginning at column 6, line 27 (previously cited by the Examiner), the discussion beginning at column 4, line 10 (previously cited by the Examiner), and the discussion at column 5, line 33 (previously cited by the Examiner). Applicant respectfully submits that the instant rejections to the claims are, for all practical purposes, repeated from the Examiner's previously issued Office Actions.

In accordance with M.P.E.P. §707.07(f), the Examiner must "address any arguments presented by the applicant which are still relevant to any references being applied." Applicant respectfully submits that, in accordance with M.P.E.P. §707.07(f), the Examiner has not "addressed" the arguments presented by applicant which are still relevant to Lin. For the reasons set forth below and as previously submitted in applicant's responses to the Examiner's prior office actions, Lin does not anticipate each and every element of applicant's claims 1-7 and 9-33 and, accordingly, applicant's claims are allowable over the art of record.

Applicant's claim 1 is an improvement over prior art software auditing computer programs. Prior art software auditing systems typically retrieve large volumes of data and require excessive processing resources and time in order to report usage of various software modules and tasks. Applicant's claim 1 improves upon prior art software auditing systems by filtering out redundant and/or undesirable information that are typically reported in prior art systems. More particularly, applicant's claim 1 filtering facility is effective "to filter at least one previously

identified program from...load module execution information" that is collected by applicant's claim 1 monitor (emphasis added).

In the present Office Action, the Examiner cites to discussions at col. 3, line 11, and to claim 4 (col. 9, line 6) of Lin for supporting his position that Lin discloses applicant's claim 22 (and by way of cross-reference) claim 1 filtering facility that is effective to filter at least one previously identified program from "software product execution information."

Applicant respectfully maintains that, contrary to the Examiner's characterization, Lin does not teach or suggest elements of applicant's claim 1, including applicant's claim 1 monitor, filtering facility and correlator. According to Lin, the operating system maintains a system task list that identifies active tasks and subtasks. Applicant's claim 1, in contrast, defines that the monitor (not the operating system) collects load module execution information. Also and distinct from Lin, the claim 1 filtering facility filters at least one previously identified program from the load module execution information. Thus, no such monitor and no filtering facility is disclosed, taught or suggested in Lin.

In particular, Lin's detecting steps merely extract identifiers from a system task list, which lists active tasks by the operating system. No separate facility is taught or suggested by Lin that collects load module execution information by a monitor and filters by a filtering facility at least one identified program from the load module execution information. Merely extracting identifiers from a list of active tasks and is not tantamount to filtering programs from collected load module execution information.

Applicant respectfully submits that no description or structure is set forth anywhere in Lin's specification that would teach or suggest applicant's claim 1 "monitor" and "filtering facility" to one skilled in the art. For the foregoing reasons, therefore, applicant respectfully submits that Lin does not teach or suggest elements of applicant's claim 1, and, accordingly, does not anticipate under 35 U.S.C. §102(e).

Applicant's independent claims 15, 22 and 28 include similar limitations and, therefore, are also not anticipated by Lin. Claims 2-7 and 9-14 depend directly or indirectly from claim 1, claims 16-21 depend directly or indirectly from claim 15, claims 23-25 depend directly or indirectly from claim 22, and claims 29-33 depend directly or indirectly from claim 28 and are, therefore, patentable for the same reasons as well as because the combinations of features in

those claims with the features set forth in the clam(s) from which they respectively depend.

For the foregoing reasons, the Examiner is respectfully requested to reconsider the application and pass this case to issue.

THIS CORRESPONDENCE IS BEING SUBMITTED ELECTRONICALLY THROUGH THE PATENT AND TRADEMARK OFFICE EFS FILING SYSTEM ON October 19, 2006.

Respectfully submitted,

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